

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

MICHAEL C. ZIMMER, D.C., P.C.,
individually and on behalf of all others
similarly-situated

Plaintiff,

v.

INTEGRATED PAIN MANAGEMENT, S.C.,

Defendant.

Case No.
REMOVAL FROM CIRCUIT
COURT OF ST. LOUIS COUNTY,
MISSOURI

**NOTICE OF REMOVAL TO FEDERAL COURT
BASED ON FEDERAL QUESTION JURISDICTION**

Pursuant to 28 U.S.C. §§ 1331, 1367, 1441 and 1446, Defendant, INTEGRATED PAIN MANAGEMENT, S.C., by and through its attorneys, SmithAmundsen LLC, hereby submits this Notice of Removal to the United States District Court for the Eastern District of Missouri of the above-styled action, pending as Case No. 14SL-CC01419 in the Circuit Court of St. Louis County, Missouri. In support of this petition and as grounds for removal, Defendant states as follows:

1. On or about April 30, 2014, Plaintiff, Michael C. Zimmer, D.C., P.C. ("Plaintiff") filed this action in the Circuit Court of St. Louis County, Missouri styled, Michael C. Zimmer, D.C., P.C., individually and on behalf of all others similarly-situated v. Integrated Pain Management, S.C., Case No. 14SL-CC01419. (Defendant attaches as **Exhibit A** to this Notice of Removal to Federal Court based on Federal Question Jurisdiction a copy of the Summons, Class Action Petition and Motion for Class Certification.) No substantive proceedings have occurred in the Circuit Court of St. Louis County as of the date of this removal.

2. The original Summons was issued on May 16, 2014. Defendant was served with Plaintiff's Class Action Petition, Motion for Class Certification and Summons on May 30, 2014.

3. The Class Action Petition alleges three causes of action based on two claimed transmissions from Defendant to Plaintiff of purported unsolicited facsimile advertisements. Specifically, the Class Action Petition contains the following claims: violation of the Telephone Consumer Protection Act, 47 U.S.C. Section 227 ("TCPA"); conversion; and violation of the "Missouri Consumer Fraud and Deceptive Business Practices Act, Chapter 407," Mo. Ann. Stat. § 407. Plaintiff purports to bring these claims on behalf of a class of persons. (*See Exhibit A.*)

4. This case is a civil action of which the United States District Court for the Eastern District of Missouri has original jurisdiction under the provisions of 28 U.S.C. § 1331 and the United States Supreme Court decision in *Mims v. Arrow Financial Services, L.L.C.*, 132 S. Ct. 740, 181 L.Ed. 2d 881 (2012) because Plaintiff has alleged a cause of action under the TCPA, as indicated by not only Count I but by the "Preliminary Statement" of the Class Action Petition.

5. Removal to this federal court is authorized by 28 U.S.C. § 1441. The United States Supreme Court has held that claims pursuant to the TCPA arise under federal law; consequently, actions brought pursuant to the TCPA are removable under 28 U.S.C. § 1441. *See Mims*, 132 S. Ct. at 747, 753, n.15. (stating "nothing in...the TCPA calls for displacement of ...federal question jurisdiction;" and, noting the absence of any Congressional intent to prohibit the removal of TCPA actions to federal court pursuant to 28 U.S.C. § 1441).

6. This Court has supplemental jurisdiction over Plaintiff's consumer fraud and conversion claims because they form part of the same case or controversy as the alleged TCPA violation. *See* 28 U.S.C. § 1367. Plaintiff's claims do not raise novel or complex issues of Missouri law nor do Plaintiff's state law claims predominate over its federal TCPA claim. *See*

28 U.S.C. § 1367(c). This Court also has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28 U.S.C. § 1441(c).

7. There are no other defendants named in this action.

8. At the time of filing this Notice of Removal to Federal Court, no other processes, pleadings, or orders, other than the documents attached hereto, have been served upon Defendant. Plaintiff has not yet requested a trial by jury as indicated by the Class Action Petition.

9. This Notice of Removal is timely, in accordance with 28 U.S.C. § 1446(b), as it is filed within 30 days after Defendant was served with the Summons and Class Action Petition, which sets forth the claims upon which the Notice of Removal is based. *See Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999).

10. Venue lies in the United States District Court for the Eastern District of Missouri, pursuant to 28 U.S.C. § 1446(a), because the action was filed in the Circuit Court of St. Louis County, Missouri, which is located within this District and Division.

11. Written notice of this Notice of Removal is being served upon Plaintiff, and a copy of the Notice of Removal is being filed with the Circuit Court of St. Louis County, Missouri.

WHEREFORE, for the foregoing reasons, Defendant, INTEGRATED PAIN MANAGEMENT, S.C., petitions that the above-entitled action be removed and transferred from the Circuit Court of St. Louis County, Missouri to the United States District Court for the Eastern District of Missouri.

Respectfully Submitted,

By: /s/ Anne E. Bode
One of the Attorneys for Defendant
INTEGRATED PAIN MANAGEMENT, S.C.

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PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing instrument was served upon the Clerk of the Court and all counsel of record via electronic filing on June 19, 2014.

/s/ Anne E. Bode